

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

Berry v. HEX, et. al.

Case No. CV03 00385 SOM-LEK

**Rule 26(A)(2) FOURTH SUPPLEMENTAL EXPERT REPORT OF  
MARTIN G. WALKER, PH.D**

**EXHIBIT "E"**

I, Martin G. Walker, Ph.D., provide the following supplemental expert report:

1. I have been retained as an expert consultant by the Post-Confirmation Trust for Fleming Companies, Inc. I have been asked to review certain declarations and memoranda in regarding Plaintiff Wayne Berry's Motion for Order to Show Cause re Guidance Software, and, if possible, render opinions relating to these papers. This report is based on my personal knowledge and experience as well as my investigation in this matter, and reflects my expert opinions on certain issues to which I could testify if asked.

#### **I. SUMMARY OF FINDINGS.**

2. I found that Berry's arguments are completely unsupported by any facts. In particular, I found that there is no 4.6 gigabyte cluster, that there is no evidence that there ever was a 4.6 gigabyte Access database, and that Guidance properly produced all recoverable database files requested by Berry.

#### **II. MATERIALS REVIEWED.**

3. In addition to material reviewed detailed in previous expert reports, I reviewed Berry's Motion for Order to Show Cause Why Guidance Software, Inc. Shall not Be Held in Contempt and accompanying Declarations of Hogan and Berry. I also reviewed a copy of the files from the "Before Images" as produced to Defendants, as well as the list of "Suspect Files" created by Berry.

#### **III. SUMMARY OF MY ASSIGNMENT.**

4. I was asked to review and analyze the allegations made in Berry's Motion to Show Cause and allegedly supported by the Declarations of Berry and Hogan. To the extent possible I was asked to provide any opinions regarding the reliability and veracity of these allegations.

#### **IV. BACKGROUND**

##### Bits and Bytes

5. As most everyone knows, today's computer systems are based on digital processors which work with binary data. Binary data are represented by ones and zeros. Thus the smallest unit of data (which can have a value of either one or zero) is a single binary digit, or bit. Further, since time immemorial (or at least since the 1950s) characters have been encoded in a

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
vs.	)	
	)	
HAWAIIAN EXPRESS SERVICE,	)	
INC., a California corporation; et al.,	)	
	)	
Defendants.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing document were  
duly served upon the following parties via hand delivery and/or first class mail,  
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DATED: Honolulu, Hawaii, JAN 3 2006.

  
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